

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

FILED

MAY 05 2011

MICHAEL GANS
CLERK OF COURT

No. 11- 1977

in re DAVID STEBBINS

)
)
) on Petition for Writ of Mandamus
)
)

PETITION FOR WRIT OF MANDAMUS

Comes now *pro se* petitioner David Stebbins, who respectfully submits the following petition for a writ of mandamus against the Honorable Richard Dorr ("Hon. Dorr"), instructing him to grant my leave to appeal in forma pauperis.

Hon. Dorr denies my motion for leave to appeal in forma pauperis on three bases: One is that the Defendant did not agree to an arbitration. This is not true. My original petition to confirm the arbitration award clearly outlined a legal basis upon which the contract can be valid. The judge disagreed, but that is what appealing is for, is it not?

The second was based on evidence that should not have been admitted into the record. They were not timely, and therefore, should have been struck, accordingly.

The third states that I seek to appeal a non-appealable order. This is pure, utter BS. He knows, perfectly well, that an order denying confirmation of an arbitration award is an appealable order. See 9 U.S.C. § 16(a)(1)(C).

The judge is committing a clear abuse of discretion by depriving me, in bad faith, of my access to the courts unless I pay a fee that would constitute an undue burden. Therefore, I seek a writ of mandamus instructing him to grant me leave to proceed in forma pauperis. You have jurisdiction to grant this leave. See *In re Apple, Inc.*, 602 F.3d 909, 911 (8th Cir. 2010).

A brief will be filed, just as soon as this petition is given a case number, and I can file on ECF.



David Stebbins
1407 N Spring Rd,
APT #5

Harrison, AR 72601
870-204-6024

stebbinsd@yahoo.com

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EIGHTH CIRCUIT

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MICHAEL GANS
CLERK OF COURT

Motion and Affidavit for Permission
to Appeal In Forma Pauperis

In re David Stebbins

v.

Appeal No. 11-1977

District Court or Agency No. _____

Affidavit in Support of Motion

Instructions

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Signed: David Stebbins

Date: May 3, 2011

My issues on appeal are:

I need a writ of mandamus instructing the Honorable Richard Dorr to grant my motion for leave to appeal in forma pauperis.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly amount during the past 12 months | | Amount expected next month | |
|---|--|--------|----------------------------|--------|
| | You | Spouse | You | Spouse |
| Employment | \$ 0 | \$ | \$ 0 | \$ |
| Self-employment | \$ 0 | \$ | \$ 0 | \$ |
| Income from real property (such as rental income) | \$ 0 | \$ | \$ 0 | \$ |
| Interest and dividends | \$ 0 | \$ | \$ 0 | \$ |
| Gifts | \$ 0 | \$ | \$ 0 | \$ |
| Alimony | \$ 0 | \$ | \$ 0 | \$ |

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EIGHTH CIRCUIT

| | | | | |
|--|-----------------|----------|---------------|----------|
| Child support | \$ <u>0</u> | \$ _____ | \$ <u>0</u> | \$ _____ |
| Retirement (such as social security, pensions, annuities, insurance) | \$ <u>0</u> | \$ _____ | \$ <u>0</u> | \$ _____ |
| Disability (such as social security, insurance payments) | \$ <u>6 / 4</u> | \$ _____ | \$ <u>674</u> | \$ _____ |
| Unemployment payments | \$ <u>0</u> | \$ _____ | \$ <u>0</u> | \$ _____ |
| Public-assistance (such as welfare) | \$ <u>0</u> | \$ _____ | \$ <u>0</u> | \$ _____ |
| Other (specify): <u>see p. 5</u> | \$ <u>25</u> | \$ _____ | \$ <u>0</u> | \$ _____ |
| Total monthly income: | \$ <u>699</u> | \$ _____ | \$ <u>674</u> | \$ _____ |

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of employment | Gross monthly pay |
|-------------------------|-----------------------------|---------------------|-------------------|
| Reliable Heat & Air, LL | 584 Animal Safari Rd, Bra | 05/2009 to 06/2006 | \$880 |
| Wendy's | 915 HWY 65, Harrison, AR | 06/2008 to 07/2008 | \$500 |
| Wendy's | 2050 N College Ave, Fayette | 04/2008 to 05/2008 | \$400 |

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

4. How much cash do you and your spouse have? \$ 653.46

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Financial institution | Type of account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|------------------|------------------------|
| First Federal Bank | checking | \$ <u>653.46</u> | \$ _____ |
| _____ | _____ | \$ _____ | \$ _____ |
| _____ | _____ | \$ _____ | \$ _____ |

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

I only have two "assets." One is my car, which is breaking down as we speak. The other is my computer set-up, which is worth \$300.

| | | |
|---|------------------|-----------|
| Laundry and dry-cleaning | \$ 10 | \$ |
| Medical and dental expenses | \$ 0 | \$ |
| Transportation (not including motor vehicle payments) | \$ 50 | \$ |
| Recreation, entertainment, newspapers, magazines, etc. | \$ 30 | \$ |
| Insurance (not deducted from wages or included in Mortgage payments) | \$ 125 | \$ |
| Homeowner's or renter's | \$ | \$ |
| Life | \$ | \$ |
| Health | \$ | \$ |
| Motor Vehicle | \$ 125 | \$ |
| Other: _____ | \$ | \$ |
| Taxes (not deducted from wages or included in Mortgage payments) (specify): _____ | \$ 18.60 | \$ |
| Installment payments | | |
| Motor Vehicle | \$ 0 | \$ |
| Credit card (name): _____ | \$ 0 | \$ |
| Department Store (name): _____ | \$ 0 | \$ |
| Other: student loan | \$ 30 | \$ |
| Alimony, maintenance, and support paid to others | \$ 0 | \$ |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ 0 | \$ |
| Other (specify): _____ | \$ 0 | \$ |
| Total monthly expenses: | \$ 705.60 | \$ |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

The \$25 in "other" income is actually a one lump sum of \$300 last February, but you wanted my average income over the past year, so I divided by 12. That is why I put "0" in the "expected next month" column.

13. State the address of your legal residence.

1407 N Spring Rd, APT #5

Harrison, AR 72601

Your daytime phone number: (870) 204-6024

Your age: 22 Your years of schooling: 15

Your social-security number: 425-71-4148

| | | |
|--------------------------|---------------------------|------------------------------------|
| Home (Value) | Other real estate (Value) | Motor vehicle #1 (Value) |
| _____ | _____ | Make & year: 1990 Isuzu (<\$1,000) |
| _____ | _____ | Model: Pickup |
| _____ | _____ | Registration #: _____ |
| Motor vehicle #2 (Value) | Other assets (Value) | Other assets (Value) |
| Make & year: _____ | Computer (\$300) | _____ |
| Model: _____ | _____ | _____ |
| Registration #: _____ | _____ | _____ |

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| I have no creditors | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

7. State the persons who rely on you or your spouse for support.

| Name | Relationship | Age |
|---------------|--------------|-------|
| No dependents | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

| | You | Your Spouse |
|---|----------|-------------|
| Rent or home-mortgage payment (include lot rented for mobile home) | \$ 192 | \$ _____ |
| Are real-estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| Utilities (electricity, heating fuel, water, sewer, and telephone) | \$ 30 | \$ _____ |
| Home maintenance (repairs and upkeep) | \$ 0 | \$ _____ |
| Food | \$ 216 | \$ _____ |
| Clothing | \$ 21.60 | \$ _____ |